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IN THE

Supreme Court of the United States

October Term, 1963.

No. 1008.

MORRIS C. GOLDBERG, *Petitioner,*

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITIONER'S REPLY BRIEF.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 1068.

MORRIS C. GOLDBERG, *Petitioner,*

v.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITIONER'S REPLY BRIEF.

In our petition (16-17), we pointed out that the holding of the Court of Appeals that petitioner had no basis on which to object to the admission of the disputed records was in conflict with the decisions in *Henzel v. United States*, 296 F. 2d 650 (5 Cir., 1961) and *Wilder v. Brewer*, 329 F. 2d 924 (9 Cir., 1964). The government says these cases are distinguishable because they involved one who was the sole shareholder of a corporation whereas petitioner, although he owned controlling interests, was not the sole shareholder of the corporations with which we are concerned in this case.

The corporate records which were used as evidence against petitioner were those of Pennsylvania Coat & Apron Supply Co. of New Jersey, Pennsylvania Coat & Apron Supply Co. of Pennsylvania, Anderson's Empire

Coat, Apron & Towel Supply Co., Inc. and Pennsylvania Laundry Co. The records were unlawfully taken by the employees in April, June and August, 1958. The evidence shows the following with respect to the stock ownership of these companies and of Keystone Coat & Apron Mfg. Corp., a related company, as of that time and thereafter (R. 145a-149a, 165a-176a, 734a-740a):

(a) *Pennsylvania Coat & Apron of New Jersey*—On September 1, 1955, this company was merged into Pennsylvania Laundry and all of its stock was transferred to that corporation as part of the merger.

(b) *Pennsylvania Coat & Apron of Pennsylvania*—From its inception in 1956, all of the stock of this company was owned by Pennsylvania Laundry.

(c) *Anderson's Empire*—From September 1, 1955, all of the stock of this company was owned by Pennsylvania Laundry.

(d) *Pennsylvania Laundry*—On January 1, 1955, this company had only one class of stock outstanding, of which 99.92% was owned by petitioner. On September 1, 1955, the company was reorganized, and thereafter, it had both preferred and common stock. From September 1, 1957, petitioner owned 3,053 shares out of a total of 3,150 shares of the outstanding preferred stock; his brother, Frank M. Goldberg, owned the remaining 97 shares. From the same date, petitioner also owned 21,234 shares out of a total of 24,163 shares of the outstanding common stock; Frank M. Goldberg owned 1,079 shares, and Keystone Coat & Apron owned 1,850 shares. Frank M. Goldberg paid no consideration for the shares which he owned (R. 195a-196a).

(e) *Keystone Coat & Apron*—From September 1, 1955, all of the preferred and common stock of this company was owned by Pennsylvania Laundry.

These corporations were operated as though they and petitioner were one, and the few shares of stock owned by petitioner's brother could not destroy this unity. The Court of Appeals recognized this when it observed that petitioner "directly or indirectly owned all of the stock in these corporations . . ." (Appendix A to Petition at 3a). Moreover, in disposing of the contention that what petitioner did constituted embezzlement, the Court of Appeals pointed out that one cannot be guilty of embezzlement of funds "from his wholly owned corporations as here, . . ." (Appendix A to Petition at 17a-18a).

The corporations clearly embodied petitioner's personal interests within the meaning of *United States v. White*, 322 U. S. 604, 701 (1944), and petitioner had a right to the possession of the disputed documents. Hence, he was entitled to object to their use as evidence against him.

Respectfully submitted,

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